

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 439

Introduced by Senators Steinberg and Leno

February 21, 2013

An act to amend Section ~~11362.7~~ 11362.765 of the Health and Safety Code, relating to medical marijuana.

LEGISLATIVE COUNSEL'S DIGEST

SB 439, as amended, Steinberg. Medical marijuana.

Existing law, the Compassionate Use Act of 1996, provides that a patient or a patient's primary caregiver who possesses or cultivates marijuana for personal medical purposes of the patient upon the written or oral recommendation or approval of a physician is not subject to conviction for offenses relating to possession and cultivation of marijuana.

Existing law also makes it a crime to possess for sale, plant, cultivate, harvest, dry process, transport, import into this state, sell, furnish, administer, or give away, to offer to transport, import into this state, sell, furnish, administer, or give away, or to attempt to import into this state or transport, any marijuana. Existing law makes it a felony or misdemeanor to open or maintain any place for the purpose of unlawfully selling, giving away, or using, or to knowingly rent, lease, or make available for use a building, room, space, or enclosure for the purpose of unlawfully manufacturing, storing, or distributing any controlled substance for sale or distribution. Existing law further provides that every building or place used for the purpose of unlawfully selling, serving, storing, keeping, manufacturing, or giving away any controlled substance, and every building or place wherein or upon

which those acts take place, is a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered.

Existing law requires the Attorney General to develop and adopt appropriate guidelines to ensure the security and nondiversion of marijuana grown for medical use by patients qualified under the Compassionate Use Act of 1996, and the Attorney General has published guidelines regarding collectives and cooperatives organized and operated to cultivate and distribute marijuana for medical purposes.

This bill would exempt from the criminal acts and abatement of nuisance provisions described above collectives, and cooperatives, as defined. The bill would also exempt those entities and persons from criminal prosecution or punishment solely on the basis of the fact that they receive compensation for actual expenses incurred in carrying out activities that are in compliance with those guidelines.

~~Existing law, the Compassionate Use Act of 1996, prohibits any physician from being punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes. The act prohibits the provisions of law making unlawful the possession or cultivation of marijuana from applying to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.~~

~~This bill would make a technical, nonsubstantive change to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 11362.765 of the Health and Safety Code
- 2 is amended to read:
- 3 11362.765. (a) Subject to the requirements of this article, the
- 4 individuals specified in subdivision (b) shall not be subject, on
- 5 that sole basis, to criminal liability under Section 11357, 11358,
- 6 11359, 11360, 11366, 11366.5, or 11570. However, nothing in
- 7 this section shall authorize the individual to smoke or otherwise
- 8 consume marijuana unless otherwise authorized by this article,
- 9 nor shall anything in this section authorize any individual or group
- 10 to cultivate or distribute marijuana for profit.
- 11 (b) Subdivision (a) shall apply to all of the following:

1 (1) A qualified patient or a person with an identification card
2 who transports or processes marijuana for his or her own personal
3 medical use.

4 (2) A designated primary caregiver who transports, processes,
5 administers, delivers, or gives away marijuana for medical
6 purposes, in amounts not exceeding those established in subdivision
7 (a) of Section 11362.77, only to the qualified patient of the primary
8 caregiver, or to the person with an identification card who has
9 designated the individual as a primary caregiver.

10 (3) Any individual who provides assistance to a qualified patient
11 or a person with an identification card, or his or her designated
12 primary caregiver, in administering medical marijuana to the
13 qualified patient or person or acquiring the skills necessary to
14 cultivate or administer marijuana for medical purposes to the
15 qualified patient or person.

16 (4) *Collectives and cooperatives.*

17 (c) *Collectives and cooperatives that receive compensation for*
18 *actual expenses incurred in carrying out activities that are in*
19 *compliance with the guidelines referenced in subdivision (e),*
20 *including reasonable compensation incurred for services provided*
21 *to the members or the organization, shall not be subject to*
22 *prosecution or punishment under Section 11359 or 11360 solely*
23 *on the basis of the fact that those entities or persons receive*
24 *compensation as described in this subdivision.*

25 ~~(e)~~

26 (d) A primary caregiver who receives compensation for actual
27 expenses, including reasonable compensation incurred for services
28 provided to an eligible qualified patient or person with an
29 identification card to enable that person to use marijuana under
30 this article, or for payment for out-of-pocket expenses incurred in
31 providing those services, or both, shall not, on the sole basis of
32 that fact, be subject to prosecution or punishment under Section
33 11359 or 11360.

34 (e) *For purposes of this section, both of the following apply:*

35 (1) *“Collectives and cooperatives” means a collective or*
36 *cooperative that operates within the terms of the Compassionate*
37 *Use Act of 1996 (Section 11362.5) and this article and that is*
38 *organized and operated in compliance with paragraphs A and B*
39 *of Section IV of the Guidelines for the Security and Non-Diversion*
40 *of Marijuana Grown for Medical Use, issued by the Attorney*

1 *General in August 2008, pursuant to Section 11362.81. For*
2 *purposes of this section “collectives and cooperatives” includes*
3 *the officers, members, and employees of the collectives and*
4 *cooperatives.*

5 (2) *A collective may be organized as any statutory business*
6 *entity permitted under California law.*

7 ~~SECTION 1. Section 11362.7 of the Health and Safety Code~~
8 ~~is amended to read:~~

9 ~~11362.7. For purposes of this article, the following definitions~~
10 ~~shall apply:~~

11 (a) ~~“Attending physician” means an individual who possesses~~
12 ~~a license in good standing to practice medicine or osteopathy issued~~
13 ~~by the Medical Board of California or the Osteopathic Medical~~
14 ~~Board of California and who has taken responsibility for an aspect~~
15 ~~of the medical care, treatment, diagnosis, counseling, or referral~~
16 ~~of a patient and who has conducted a medical examination of that~~
17 ~~patient before recording in the patient’s medical record the~~
18 ~~physician’s assessment of whether the patient has a serious medical~~
19 ~~condition and whether the medical use of marijuana is appropriate.~~

20 (b) ~~“Department” means the State Department of Public Health.~~

21 (c) ~~“Person with an identification card” means an individual~~
22 ~~who is a qualified patient who has applied for and received a valid~~
23 ~~identification card pursuant to this article.~~

24 (d) ~~“Primary caregiver” means the individual, designated by a~~
25 ~~qualified patient or by a person with an identification card, who~~
26 ~~has consistently assumed responsibility for the housing, health, or~~
27 ~~safety of that patient or person, and may include any of the~~
28 ~~following:~~

29 (1) ~~In any case in which a qualified patient or person with an~~
30 ~~identification card receives medical care or supportive services,~~
31 ~~or both, from a clinic licensed pursuant to Chapter 1 (commencing~~
32 ~~with Section 1200) of Division 2, a health care facility licensed~~
33 ~~pursuant to Chapter 2 (commencing with Section 1250) of Division~~
34 ~~2, a residential care facility for persons with chronic life-threatening~~
35 ~~illness licensed pursuant to Chapter 3.01 (commencing with Section~~
36 ~~1568.01) of Division 2, a residential care facility for the elderly~~
37 ~~licensed pursuant to Chapter 3.2 (commencing with Section 1569)~~
38 ~~of Division 2, a hospice, or a home health agency licensed pursuant~~
39 ~~to Chapter 8 (commencing with Section 1725) of Division 2, the~~
40 ~~owner or operator, or no more than three employees who are~~

1 designated by the owner or operator, of the clinic, facility, hospice,
2 or home health agency, if designated as a primary caregiver by
3 that qualified patient or person with an identification card.

4 ~~(2) An individual who has been designated as a primary~~
5 ~~caregiver by more than one qualified patient or person with an~~
6 ~~identification card, if every qualified patient or person with an~~
7 ~~identification card who has designated that individual as a primary~~
8 ~~caregiver resides in the same city or county as the primary~~
9 ~~caregiver.~~

10 ~~(3) An individual who has been designated as a primary~~
11 ~~caregiver by a qualified patient or person with an identification~~
12 ~~card who resides in a city or county other than that of the primary~~
13 ~~caregiver, if the individual has not been designated as a primary~~
14 ~~caregiver by any other qualified patient or person with an~~
15 ~~identification card.~~

16 ~~(e) A primary caregiver shall be at least 18 years of age, unless~~
17 ~~the primary caregiver is the parent of a minor child who is a~~
18 ~~qualified patient or a person with an identification card or the~~
19 ~~primary caregiver is a person otherwise entitled to make medical~~
20 ~~decisions under state law pursuant to Sections 6922, 7002, 7050,~~
21 ~~or 7120 of the Family Code.~~

22 ~~(f) “Qualified patient” means a person who is entitled to the~~
23 ~~protections of Section 11362.5, but who does not have an~~
24 ~~identification card issued pursuant to this article.~~

25 ~~(g) “Identification card” means a document issued by the State~~
26 ~~Department of Health Services that document identifies a person~~
27 ~~authorized to engage in the medical use of marijuana and the~~
28 ~~person’s designated primary caregiver, if any.~~

29 ~~(h) “Serious medical condition” means all of the following~~
30 ~~medical conditions:~~

31 ~~(1) Acquired immune deficiency syndrome (AIDS).~~

32 ~~(2) Anorexia.~~

33 ~~(3) Arthritis.~~

34 ~~(4) Cachexia.~~

35 ~~(5) Cancer.~~

36 ~~(6) Chronic pain.~~

37 ~~(7) Glaucoma.~~

38 ~~(8) Migraine.~~

39 ~~(9) Persistent muscle spasms, including, but not limited to,~~
40 ~~spasms associated with multiple sclerosis.~~

1 ~~(10) Seizures, including, but not limited to, seizures associated~~
2 ~~with epilepsy.~~

3 ~~(11) Severe nausea.~~

4 ~~(12) Any other chronic or persistent medical symptom that~~
5 ~~either:~~

6 ~~(A) Substantially limits the ability of the person to conduct one~~
7 ~~or more major life activities as defined in the Americans with~~
8 ~~Disabilities Act of 1990 (Public Law 101-336).~~

9 ~~(B) If not alleviated, may cause serious harm to the patient's~~
10 ~~safety or physical or mental health.~~

11 ~~(i) "Written documentation" means accurate reproductions of~~
12 ~~those portions of a patient's medical records that have been created~~
13 ~~by the attending physician, that contain the information required~~
14 ~~by paragraph (2) of subdivision (a) of Section 11362.715, and that~~
15 ~~the patient may submit to a county health department or the~~
16 ~~county's designee as part of an application for an identification~~
17 ~~card.~~